

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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|                                       |   |                                 |
|---------------------------------------|---|---------------------------------|
| <b>BERNADINE T. GRIFFITH</b>          | ) |                                 |
|                                       | ) |                                 |
|                                       | ) |                                 |
| <b>Plaintiff,</b>                     | ) |                                 |
|                                       | ) |                                 |
| <b>v.</b>                             | ) | <b>C.A. No. 03-CV-12573-EFH</b> |
|                                       | ) |                                 |
| <b>ONEBEACON INSURANCE COMPANY,</b>   | ) |                                 |
| <b>ONEBEACON AMERICA INSURANCE</b>    | ) |                                 |
| <b>COMPANY, MICHAEL A. SISTO, and</b> | ) |                                 |
| <b>KAREN ALLEN HOLMES</b>             | ) |                                 |
|                                       | ) |                                 |
| <b>Defendants.</b>                    | ) |                                 |
|                                       | ) |                                 |

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**DEFENDANTS' MOTION TO CONDUCT RULE 35 EXAMINATION**

Based on the supporting memorandum submitted herewith, the defendants OneBeacon Insurance Company, OneBeacon America Insurance Company, Michael A. Sisto, and Karen Allen Holmes (collectively, the “defendants”), by and through their attorneys, hereby move pursuant to Rule 35 of the Massachusetts Federal Rules of Civil Procedure for an order requiring that the plaintiff Bernadine T. Griffith (the “plaintiff” or “Griffith”) submit to a mental examination by Harvey Waxman, Ph.D. (“Dr. Waxman”), a suitably licensed or certified examiner.

As more fully stated in the supporting memorandum, a Rule 35 mental examination is appropriate because the plaintiff has affirmatively placed her mental state in controversy by alleging that her termination caused continuing mental injuries that have medically prevented her from mitigating her damages.

WHEREFORE, the defendants respectfully request this Court issue an order allowing the defendants' Motion to Conduct Rule 35 Examination, providing for the examination of the plaintiff by Harvey Waxman, Ph.D., along the specifications set forth in the accompanying memorandum, at the offices of Dr. Waxman and at a time mutually convenient to the plaintiff and Dr. Waxman.

Respectfully submitted,

ONEBEACON INSURANCE CO.,  
ONEBEACON AMERICA INSURANCE CO.,  
MICHAEL A. SISTO, and  
KAREN ALLEN HOLMES

By their attorneys

/s/ Leah M. Moore  
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Dated: May 2, 2005

**CERTIFICATE OF SERVICE**

I, Leah M. Moore, hereby certify that on this 2<sup>nd</sup> day of May 2005, I caused a true and correct copy of the foregoing to be served via first class mail upon Kathleen J. Hill, Esq., Attorney for Plaintiff, Law Office of Kathleen J. Hill, 92 State Street, Suite 700, Boston, Massachusetts 02109, being the address designated by said attorney for service of all pleadings.

/s/ Leah M. Moore

Leah M. Moore